At common law the court would not try the truth of a return to an alternative writ upon affidavits. *Universal Church* v. *Columbia Township*, 6 Oh. St. 446. See *Manaton's Case*, T. Raym. 365. The remedy of the prosecutor was by an action on the case for false return or, if the rights of the public were involved, by criminal information. *State* v. *Wilmington Bridge Co.*, 3 Harr. (Del.) 540. See TAPPING, MANDAMUS, 383. The statute of Anne made the return traversable in cases involving municipal corporations. 9 ANNE, c. 20. A later enactment extended the same rule to all cases for mandamus. 1 WILL. IV. c. 21. The pleadings in mandamus became substantially like those in ordinary actions at law. See *King* v. *Mayor and Aldermen of London*, 3 Barn. & Ad. 255, 280. The statute of Anne or similar legislation forms a component part of the law of most of the United States. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., § 457 *et seq.* Even where the statute of Anne has not been recognized it has sometimes been held that the modern development of the writ of mandamus and the policy of our law against multiplicity of suits justify an overturning of the dilatory and cumbersome rule of the common law. *Fitzhugh* v. *Custer*, 4 Tex. 391. The principal case, however, is supported by prior decisions in Delaware and by the weight of early authority elsewhere. *McCoy* v. *State*, 2 Marv. (Del.) 543, 36 Atl. 81; *Dane* v. *Derby*, 54 Me. 95; *Police Board* v. *Grant*, 17 Miss. 77.

MASTER AND SERVANT — ESTOPPEL — LIABILITY FOR TORT OF DEFENDANT REPRESENTING ITSELF AS EMPLOYER. — The defendant corporation turned over a mine which it had operated to its president. A miner employed after the transfer was injured. He brought suit against the defendant, reasonably believing it his employer. *Held*, that the corporation is liable. *Ward* v. *Liverpool Salt and Coal Co.*, 92 S. E. 92 (W. Va.).

Where the relation of master and servant does not exist in fact, there can be no liability predicated upon that relation unless the defendant is estopped to deny its existence. Estoppel must be taken to be the basis of the court's holding, although the precise term does not appear. See *Solomon R. Co.* v. *Jones*, 30 Kan. 601, 2 Pac. 657. Estoppel raises the question whether the plaintiff acted upon the representation. See BIGELOW, ESTOPPEL, 5 ed., 570 *et seq.* It apparently was a matter of indifference to the plaintiff who his employer was. On the other hand, the expenses of litigation have been held enough to raise an estoppel. *Meister* v. *Birney*, 24 Mich. 435. This suggests the vexed question whether estoppel constitutes part of the cause of action. See EWART, ESTOPPEL, 187. If it does it would be difficult to say that the plaintiff has a cause of action at the institution of his suit, since there has been no change of position until that moment. However that may be, the better rule is that the plaintiff can recover only for the damage actually sustained. *Campbell* v. *Nichols*, 33 N. J. L. 81. *Contra*, *Meister* v. *Birney*, *supra*. See EWART, ESTOPPEL, 191 *et seq.* Under this view the most that plaintiff could recover would be costs and attorney's fees.

PATENTS — INFRINGEMENT — RESTRICTION FORBIDDING USE EXCEPT WITH ACCESSORIES OF PATENTEE'S MANUFACTURE. — Patented motion picture-projecting machines were sold with license restriction that they be used only with films of the patentee's manufacture. The defendant, a rival film concern, with notice of the restriction, leased films to users of the machines. *Held*, that such leases do not constitute contributory infringement. *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 37 Sup. Ct. Rep. 416. For a discussion of this case, see Notes, p. 298.

PAYMENT — APPLICATION — PAYMENTS ON RUNNING ACCOUNT, PART OF WHICH IS SECURED. — Plaintiffs and defendant had a running account, on which advances were charged and payments credited without distinctions.

Plaintiffs held defendant's mortgage for a portion of the account, but payments made subsequent to the maturity of the mortgage debt covered a greater amount than the mortgage. *Held*, that the court would apply the payments to the oldest debt, and that the mortgage was therefore paid. *Mayer Bros.* v. *Gewin*, 76 So. 307 (Ala.).

Failing application of the payment by the debtor at the time of payment, the creditor may apply it to any of several debts that he may choose. *McCurdy* v. *Middleton*, 82 Ala. 131, 2 So. 721; *In re Lindau*, 183 Fed. 608. In the absence of such application, the court will apply the payment as it sees fit, considering the interests of both the debtor and the creditor. *Pope* v. *Transparent Ice Co.*, 91 Va. 79, 20 S. E. 940; see *Barrett* v. *Sipp*, 50 Ind. App. 304, 311, 98 N. E. 310, 313. In general the application by the court is made to the oldest of several debts. *Kloepfer* v. *Maher*, 84 N. Y. Supp. 138. And where the question of priority is not raised, the more general rule of application is to the debt least secured. *Barbee* v. *Morris*, 221 Ill. 382, 77 N. E. 589; *Gardner* v. *Leck*, 52 Minn. 522, 54 N. W. 746. Where the least secured debt is not the oldest, it would seem that by the better view the application should be to the one least secured. *Schuelenburg* v. *Martin*, 2 Fed. 747; *Smith* v. *Lewiston Steam Mill*, 66 N. H. 613, 34 Atl. 153; *Bank of New Roads* v. *Kentucky Refining Co.*, 27 Ky. L. R. 645, 85 S. W. 1103. But the weight of authority favors application to the earliest debt, on analogy to the rule in Clayton's Case. *Clayton's Case*, 1 Mer. 529, 572. *Moses* v. *Noble*, 86 Ala. 407, 5 So. 181; *Worthley* v. *Emerson*, 116 Mass. 374; *Tapper* v. *New Home Sewing Machine Co.*, 22 Ind. App. 313, 53 N. E. 202. See also 21 HARV. L. REV. 623.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — RIGHT OF PRIVATE PARTIES TO INJUNCTION FOR VIOLATION. — Private individuals brought suit to enjoin concerted action to prevent the use of nonunion-made materials manufactured in other states. *Held*, that the injunction be denied. *Paine Lumber Co.* v. *Neal*, 37 Sup. Ct. Rep. 718.

Equitable relief against boycotting combinations was well known in the absence of statute. *Temperton* v. *Russell*, [1893] 1 Q. B. 715; *Barr* v. *Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881. The Sherman Anti-Trust Act being "highly remedial," expressly allows triple damages in such cases. See 26 STAT. AT L. 209, § 7; *Loewe* v. *Lawler*, 208 U. S. 274. See 21 HARV. L. REV. 450. A boycott in restraint of interstate trade is now a federal question. But triple damages may be inadequate, if the injury is a continuing one requiring a multiplicity of suits. In the absence of statutory prohibition, equitable relief by the federal courts would seem to follow. See *United States* v. *Detroit Timber and Lumber Co.*, 200 U. S. 321, 339. Because the Sherman Act is silent on the point certain cases have held that by implication injunctive relief is denied to private individuals. *National Fireproofing Co.* v. *Mason Builders' Assoc.*, 169 Fed. 259. The sounder view is that there was no legislative intention to deny the right to injunction. *Bigelow* v. *Calumet and Hecla Mining Co.*, 155 Fed. 869, 876; *Delavan* v. *N. Y., N. H., and Hartford R. Co.*, 154 App. Div. (N. Y.) 8, 137 N. Y. Supp. 207. See THORNTON, THE SHERMAN ANTI-TRUST ACT, §§ 351, 427. See also 26 HARV. L. REV. 179. Nor does the Clayton Act establish a policy inconsistent with injunctions in such cases. See 38 STAT. AT L. 730, 737. Mr. Justice Pitney, in a powerful dissenting opinion, searches in vain for anything in either the Sherman or Clayton acts denying the right of a private party to an injunction against a labor union. The propriety of denying this right in a case like the present seems doubtful, to say the least.

STATUTE OF FRAUDS — PART PERFORMANCE — ACT REFERABLE SOLELY TO CONTRACT — PAYMENT OF PURCHASE-MONEY NOTE BEFORE MATURITY. — A written contract for the sale of land was modified by parol agreement that